



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2000 JUN -5 P 1:26

JUN 6 2000

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner *LL*
Associate General Counsel

SUBJECT: Pre-MUR 390
Gregorio Cervantes
Mark Nichols

I. ACTIONS RECOMMENDED:

Open a MUR, find reason to believe Gregorio Cervantes and Mark Nichols knowingly and willfully violated 2 U.S.C. § 441f, and enter into pre-probable cause to believe conciliation.

II. BACKGROUND

On April 3, 2000, this Office received a referral from the Department of Justice involving Gregorio Cervantes and Mark Nichols, defendants in a criminal case in the Central District of California involving violations of the Federal Election Campaign Act of 1971, as amended ("FECA"). Included with the referral were two checks payable to the Federal Election Commission, one for \$56,000 from Mark Nichols and the other for \$26,000 from Gregorio Cervantes. According to the referral, the checks were tendered to the Department of Justice as a consequence of global plea agreements through which the defendants seek to satisfy simultaneously their criminal and administrative liability for knowingly and willfully violating the FECA. The referral states that Mark Nichols has paid a criminal fine of \$200,000 and been sentenced to three years of probation, and that Gregorio Cervantes has paid a criminal fine of \$13,000 and been sentenced to one year probation.

The respective plea agreements state that defendant Mark Nichols pleads guilty to three counts, and that defendant Gregorio Cervantes pleads guilty to one count, of violating 2 U.S.C. §§ 441f and 437g(d) and 18 U.S.C. § 2, by causing the making of illegal conduit campaign contributions. According to the plea agreements, Mark Nichols and Gregorio Cervantes admit that their respective conduct knowingly and willfully violated 2 U.S.C. § 441f and that the FEC has exclusive authority to seek civil remedies against them for those violations pursuant to 2 U.S.C. § 437g(a)(5). The agreements state that the defendants agree to submit to the FEC's jurisdiction, to cooperate with the FEC in its compliance proceedings against them, including waiving FEC notification procedures to which they may be entitled, all evidentiary privileges, and any statute of limitations which may be applicable to the FEC proceedings, and to enter into a conciliation agreement with the FEC and to pay whatever civil penalty the FEC deems appropriate pursuant to 2 U.S.C. § 437g(a)(5).

The plea agreements with Mark Nichols and Gregorio Cervantes note that an agreement has been reached between the Department of Justice and the defendants providing for administrative and civil fines of \$56,000 and \$26,000, respectively, as an appropriate civil disposition of this matter before the FEC in view of the charged conduct and the conditions of the plea agreements. Both Mark Nichols and Gregorio Cervantes have been advised that this part of the plea agreement is not binding on the FEC. The plea agreements further note that in the event the FEC accepts the proposed civil penalty, and after a conciliation agreement has been entered into by the defendants and the FEC, no further proceedings, other than those associated with implementation of the plea agreements, shall be undertaken against the defendants by the Department of Justice or the FEC for the FECA violations admitted in the agreements.

III. FACTUAL AND LEGAL ANALYSIS

Mark Nichols was the Chief Executive Officer ("CEO") of the Cabazon Band of the Mission Indians ("Tribe") in Riverside, California. As CEO, he supervised employees of the Tribe, including employees of the Fantasy Springs Casino, which was owned and operated by the Tribe. Gregorio Cervantes was Customer Service Representative of the Tribe in Riverside County, California.

(a) Mark Nichols

Beginning in or about October 1994 and continuing through December 12, 1995, Mark Nichols engaged in a scheme to knowingly and willfully cause the Tribe to circumvent the campaign contribution limits by using the Tribe's money to make at least 28 conduit contributions, usually in \$1,000 amounts, through various members or employees of the Tribe to Clinton/Gore '96 and various candidates for the United States Senate and House of Representatives. Mr. Nichols engaged in this conduct knowing that it constituted

a violation of 2 U.S.C. § 441f.¹ The manner in which this scheme was effectuated was to encourage the conduits to make contributions to a candidate with the understanding that they would be reimbursed for their contributions by the Tribe. Mark Nichols would make the reimbursement payments by issuing the conduits either bonuses or loans which were subsequently forgiven. The plea agreement detailed only a portion of the 28 conduit contributions involved herein, as follows:

On June 15, 1995, Mark Nichols caused Donald Goodman, a casino employee, and Elaine Goodman to each issue a check for \$1,000 to Clinton/Gore '96. On or about June 20, 1995, Mark Nichols caused the Tribe to issue Donald Goodman a check in the amount of \$10,000 as reimbursement for the two June 15, 1995, checks. Mr. Goodman deposited the reimbursement check into the Goodman's joint account on or about June 24, 1995.

On or about June 17, 1995, Gregorio and Hortencia Cervantes each issued a check in the amount of \$1,000 to Clinton/Gore '96. On or about June 19, 1995, Mark Nichols caused the Tribe to issue Gregorio Cervantes a check in the amount of \$4,000, a portion of which was used to reimburse Gregorio and Hortencia Cervantes for their contributions. Mr. Cervantes deposited half of the reimbursement check (\$2,000) into the Cervantes' joint account on or about June 20, 1995.

On or about July 25, 1995, Gregorio Cervantes caused his sister, Beartice Cervantes, to issue a check for \$1,000 to Clinton/Gore '96 Primary. On or about July 26, 1995, Mark Nichols caused the Tribe to issue Gregorio Cervantes a check for \$2,000, of which \$1,000 was intended as reimbursement to Beartice Cervantes for her contribution. On or about July 27, 1995, Gregorio Cervantes, using the proceeds of the Tribe's \$2,000 check given to him by Mark Nichols, deposited \$1,000 in cash into Beartice Cervantes' bank account as reimbursement for her July 25, 1995, contribution of \$1,000 to Clinton/Gore '96 Primary.

On or about June 29, 1995, Mark Nichols caused David Riemer, a casino employee, to issue a check for \$1,000 to Clinton/Gore '96. On or about September 15, 1995, Mark Nichols caused AnnMarie Riemer to issue a check for \$1,000 to Clinton/Gore '96. On or about September 19, 1995, Mark Nichols caused the Tribe to issue David Riemer a check for \$2,000 as reimbursement for the Riemers' two contributions. On or about September 19, 1995, David Riemer deposited the \$2,000 reimbursement check into his account.

¹ In a telephone conversation with the Assistant United States Attorney who handled this matter, staff of this Office was informed that the 28 conduit contributions mentioned in the plea include the contributions to Clinton/Gore '96.

(b) Gregorio Cervantes

Beginning in or about October 1994 and continuing through July 1995, Gregorio Cervantes, in concert with Mark Nichols, engaged in a scheme to knowingly and willfully circumvent the campaign contribution limits by using the Tribe's money to make at least 13 conduit contributions, usually in \$1,000 amounts, to Clinton/Gore '96 and various candidates for the United States Senate and House of Representatives. Mr. Cervantes engaged in this conduct knowing that it constituted a violation of 2 U.S.C. § 441f.²

As part of the scheme, Gregorio Cervantes would encourage family members to make contributions to a candidate with the understanding that they would be reimbursed by the Tribe for their contributions. Within a few days of the conduits making the contributions, Mark Nichols would cause the Tribe to issue either a bonus check or a loan to Gregorio Cervantes, who in turn would reimburse the conduit family members. The plea agreement detailed only a portion of the 13 conduit contributions involved herein, as follows:

On or about June 17, 1995, Gregorio Cervantes issued a check for \$1,000 to Clinton/Gore '96, and caused Hortencia Cervantes to issue a check for \$1,000 to Clinton/Gore '96. On or about June 19, 1995, Mark Nichols caused the Tribe to issue Gregorio Cervantes a check for \$4,000, a portion of which was to be used to reimburse Gregorio and Hortencia Cervantes for their contributions. On or about June 20, 1995, Gregorio Cervantes deposited \$2,000 into the Cervantes' joint account as reimbursement for their contributions.³

On or about July 25, 1995, Gregorio Cervantes caused his sister, Beartice Cervantes, to issue a check for \$1,000 to Clinton/Gore '96 Primary. On or about July 26, 1995, Mark Nichols caused the Tribe to issue Gregorio Cervantes a check for \$2,000, of which \$1,000 was intended as reimbursement to Beartice Cervantes for her contribution. On or about July 27, 1995, Gregorio Cervantes, using the proceeds of the Tribe's \$2,000 check given to him by Mark Nichols, deposited \$1,000 in cash into Beartice Cervantes' bank account as reimbursement for her July 25, 1995, \$1,000 contribution to Clinton/Gore '96 Primary.⁴

² In a telephone conversation with the Assistant United States Attorney who handled this matter, staff of this Office was informed that the 13 conduit contributions mentioned in the plea include the contributions to Clinton/Gore '96.

³ When the plea agreements were accepted on September 14, 1999, Gregorio Cervantes stated that his wife, Hortencia, was unaware of his conduct during this period.

⁴ The plea agreements involve a total of \$7,000 in contributions to Clinton/Gore '96. According to the Audit Division, the identified contributions were not refunded or disgorged, and contributions by Greg Cervantes, Donald Goodman, Ann Marie Riemer and David Riemer were matched. Pursuant to 26 U.S.C. § 9038(c), the three year period for notification of a Commission repayment determination with respect to Clinton/Gore '96 expired on August 28, 1999.

(c) The Law

Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.

Although ordinarily we would not proceed with this matter under the Enforcement Priority System because it pertains to 1994-1995 activity, this Office believes that the unusual circumstances of the matter warrant special handling. In this instance, an investigation already has been conducted by the Department of Justice, plea agreements have been entered into, and Gregorio Cervantes and Mark Nichols each stand ready to enter into an agreement with the Commission and are offering to pay \$26,000 and \$56,000 civil penalties, respectively.

This matter is similar to closed MURs 4704, 4772, 4796, and 4879 which were also referred to the Commission by the Department of Justice after reaching agreements with the respondents that they would submit themselves to the Commission's jurisdiction and pay civil penalties.⁵ Accepting limited referrals such as this one where the evidence supports a finding and the respondents voluntarily agree to a civil penalty as part of that referral, is a way for the Commission to impact the process, expending only minimal resources.

In light of the facts contained in the referral, this Office recommends that the Commission open a Matter Under Review and find reason to believe that Mark Nichols and Gregorio Cervantes knowingly and willfully violated 2 U.S.C. § 441f by assisting in the making of contributions by the Tribe in the name of others to Clinton/Gore '96 and to various campaigns for the U.S. House of Representatives and U.S. Senate.⁶ This Office further recommends that the Commission enter into pre-probable cause to believe conciliation with the respondents and approve the attached conciliation agreements with Gregorio Cervantes and Mark Nichols which provide for admissions of the violations and a \$26,000 civil penalty and a \$56,000 civil penalty, respectively. This Office believes that the amounts of the civil penalties are acceptable in light of the facts

⁵ In all of these matters, the Commission accepted the civil penalties proffered as part of plea agreements with the Department of Justice. Moreover, because these matters arose from DOJ global settlement referrals, the Commission made no findings against any of the conduits or recipient political committees in those matters.

⁶ Although the Department of Justice referred violations of both §§ 441f and 441a, the plea agreements did not include § 441a violations and there is no evidence that the respondents made excessive contributions. Insofar as the Act and Commission regulations do not prohibit either assisting in the making, or causing the making, of excessive contributions, we have not included recommendations regarding § 441a.

21-001-402-3372

that the violations occurred in 1994-95,
and that Gregorio Cervantes and Mark Nichols have agreed to pay
criminal fines of \$200,000 and \$13,000, respectively.

IV. RECOMMENDATIONS

1. Open a Matter Under Review.
2. Find reason to believe that Gregorio Cervantes and Mark Nichols knowingly and willfully violated 2 U.S.C. § 441f.
3. Enter into conciliation with Gregorio Cervantes and Mark Nichols prior to a finding of probable cause to believe.
4. Approve the attached Conciliation Agreements.
5. Approve the attached Factual and Legal Analyses and the appropriate letters.

Attachments:

1. Conciliation Agreements (2)
2. Factual and Legal Analyses (2)



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *KCS*
DATE: June 6, 2000
SUBJECT: PRE-MUR 390 - Memo to the Commission

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒
24 Hour TALLY VOTE ☐
24 Hour NO OBJECTION ☐
INFORMATION ☐

DISTRIBUTION

COMPLIANCE ☒
Open/Closed Letters ☐
MUR ☐
DSP ☐
STATUS SHEETS ☐
Enforcement ☐
Litigation ☐
PFESP ☐
RATING SHEETS ☐
AUDIT MATTERS ☐
LITIGATION ☐
ADVISORY OPINIONS ☐
REGULATIONS ☐
OTHER ☐